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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/031,162

05/20/2002

Nikolai Grigorievich Lyapko

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WEINER & BURT, P.C.

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HARRISVILLE, MI 48740

EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

NOTIFICATION DATE

DELIVERY MODE

06/24/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/031,162	Applicant(s) LYAPKO, NIKOLAI GRIGORIEVICH	
	Examiner Ryan J. Severson	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/15/2010 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this new claim, applicant recites "each said needle being surrounded by needles". This is the same limitation that was rejected previously in claim 26 as being indefinite because it is unclear how each needle can be surrounded by other needles. This implies there is no edge on the base member, because if there was an edge, the needles immediately adjacent the edge would not be "surrounded by needles" as claimed. This is deemed impossible because the claim requires needle heads that are planar and disposed in a singular plane.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Choi (5,676,684) in view of Gabrusenok (SU 1264942) and Wybrants**

(2,441,682). Choi discloses an elastic base member (15) and needles (see column 5, line 14) fixed therein, each of the needles comprising a rod member (core), a sharpened portion and a head (the portion of the needle adjacent to base member 15). Choi also discloses the various needles in the same treatment device can be different materials (see column 5, lines 28-32). Choi does not disclose the needles as being partially coated with a coating. However, Gabrusenok teaches that acupuncture needles should be partially coated with coatings of a material which is different than the needle material in order to obtain the advantage of creating electrochemical potentials (see abstract of Gabrusenok). It would have been obvious to partially coat the Choi needles with a material which is different than the material of the needles so that it too would have this advantage. Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Therefore, one of ordinary skill in the art would have recognized that choosing various materials for the needles would be obvious.

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6. The combination of Choi and Gabrusenok fails to disclose the needles having enlarged head portions lying in a single plane and a flat resilient base member (19). Attention is drawn to Wybrants, who teaches elongated treatment elements (18, analogous to needles) having head portions (see figure 3) in a single plane to retain the treatment elements on the base member of the applicator and a flat base member to allow the treatment elements to all contact a flat body surface at one time. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the base member of Choi flat and resilient and to have included heads arranged in a planar fashion on the needles of Choi in the manner taught by Wybrants to help retain the needles in the base member and apply even treatment to a flat portion of the body.

Response to Arguments

7. Applicant's arguments filed 5/15/2010 have been fully considered but they are not persuasive.

8. Applicant argues the combination of references fails to disclose the base member being flat and elastic. However, Wybrants shows a flat base member that is resilient (i.e. elastic, see column 1, lines 51-54).

9. Applicant argues the references fail to disclose a needle comprising a core, a sharpened portion, and a thickened portion. However, Choi discloses needles that are considered a core and a sharpened portion. Gabrusenok discloses needles having a core that is partially coated. Wybrants discloses treatment elements (analogous to

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needles) having thickened portions. Therefore, this argument is not persuasive as each of the claimed elements are disclosed in the prior art.

10. Applicant argues the references fail to disclose thickened portions fixed in a base member such that sharpened portions protrude from the base member. However, Wybrants discloses thickened portions disposed in a base member. As provided in the combination of references above, this structure as added to the combination of Choi and Gabrusenok (which disclose the sharpened portion protruding from a base member) discloses the claim limitation.

11. Applicant argues the references fail to disclose one or more groups of needles having a partially coated core. However, Gabrusenok clearly discloses this, as the core is not coated along its entire length (see the cover figure, where the coating does not cover the entire length of the needle). Further, Examiner notes that in the proposed combination, the heads of the needles (the thickened portions) would not be coated.

12. Applicant argues the references fail to disclose adjacent needles made from materials with different electrochemical potentials. However, the combination of Choi and Gabrusenok (particularly Gabrusenok) teaches needle materials with different electrochemical potentials. Further, Choi teaches adjacent needles in the treatment device can be made from different materials (see column 5, lines 28-32).

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan J. Severson whose telephone number is (571) 272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

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14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan J Severson/
Examiner, Art Unit 3731
6/20/10